1945

File No. Laq Dwr/45

Legal DEPARTMENT
A BRANCH

Examined

Subject:—

Land Acquisition
References relating to
Dharwar District

" True copy - Original papers being
of bad quality - Destroyed."

V.V. Kankaya
Superintendent,
D Branch, Legal Department.

P= 15

E

File No. Laq Dwr/45

Std. Scott. Slip 24-B

310/A

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The copy was applied on the 5th January 1945.

Sd.
Record Keeper.

The Copy was ready on the 13th January 1945.
Sd.
Record Keeper.

The copy was delivered on 16th January 1945.

Sd.
Record Keeper.

Received on: 10/2/41
Registered on 13/2/41.
Decided on 3/1/45.
Duration. 3 years 10t months and 22days.

In the Court of the Assistant Judge, at Dharwar. Ext.No. 22.

Misc. Application No. 27 of 1941.
Under Section 18 of the Land Acquisition Act.

The Gadag Betgeri Municipal Borough, Gadag. Petitioner.
against.
The Assistant Collector, III Dn. Dharwar Opponent.

Claim Rs. 2000/-

JUDGMENT.

This is a reference to the Court under Sec. 18 of the Land Acquisition Act in connection with an acre of land S. No. 33 of the village of Gadag. It appears that the Municipal Borough of Gadag was using this particular area of one acre for the purposes of quarrying murum out of it. The area in question forms part of what is known as Bisham Tank area in the Municipal limits of the Gadag Municipal Borough. The Government acquired this acre of land also for quarrying murum out of it. The Government valued this piece of one acre at Rs. 200/- accepting this piece as an agricultural land and valued it according to the market value of other pieces of agricultural land roundabout. It allowed Rs. 30/ as compensation for compulsory acquisition under Sec. 93 of the Land Acquisition Act. The Municipal Borough of Gadag not accepting the award got it referred to the Court. According to the Municipality the Government should have valued it at least at Rs. 2,000/-

The evidence on behalf of the Municipality is of the Chief Officer, Mr. Hiramath, an Engineer graudate of the Bombay University, who has been the Chief Officer of the same Municipality since October 1933. According to this Officer the Bishma tank area has on its western side about three acres of land from which murum could be quarried for the use of the Municipal Borough. On its eastern side also there are two acres of land from which murum could be quarried, one acre of which was recently purchased by the Municipality in the year 1934 from one Khan Saheb Hangi and his co-sharer for Rs. 2000/-. The Chief Officer's view is that an acre of land which is full of murum should fetch more than Rs. 2000/- but as the piece that was purchased from Khan Saheb Hangi had already been partially quarried, the price that was paid to him in 1934 was reasonable one. It is also an admitted position that the acre already acquired was also to some extent quarried. According to this officer an acre of land full of murum could be quarried to a depth of four to five feet and normally it would yield murum to the extent of 1500 to 2000 brass. A brass is equal to 100 cubic feet of murum. The claim is sought to be substantiated by the Municipality on this reasoning that as a result of loss of one acre of this murum quarrying area the Municipality in some future years will have to go to a distance of about four to five miles of the Municipal area in order to get murum therefrom and the transport charges including quarrying and stacking would be about Rs. 5/- for one brass of murum. If murum was quarried from the Bishma tank area the charges would roughly amount to Rs. 2. per brass. Thus it is claimed that the Municipality will have to undergo an expense of Rs. 3 extra per brass of murum that might be required to be brought from a distant area. Thus the claim is sought to be made out that an acre of murum land ought to have fetched, Rs. 4000/- to Rs. 4500/-. However Mr. Jamkhandi on behalf of the Municipality admits that the Municipality does not claim that much amount but only claims about Rs. 2000/- for this acre of land. Obviously the claim that was sought to be made out on the basis of the transport charges for bringing a brass of murum was based

on

on wrong principle.

In the body of the award there are seven transactions shown, six of which refer to lands which have been building sites. The last one, 49-A is the piece purchased from K.S. Hangi for Rs. 1000 by the Municipality. The six transactions have been worked out by me and I find that the lands all of which are building sites, have been sold at the rate varying between Rs. 2000/- to RS. 3000/- per acre between the years 1925 and 1937. Obviously this area of one acre which has been acquired cannot claim the valuation which appears to have been the market value for the building sites. The value of one acre of murum quarrying area in the Bishma tank area cannot exceed. Rs. 2000/- in any event.

The correct principle, in my opinion, which should apply in this case is what amount will be realised by the Municipality if it allowed one acre of land to be quarried for murum to any private individual. The evidence shows that for one brass of murum that could be allowed to be quarried by the owner, the owner would get about 8 to 10 annas as its price. An acre, as the evidence shows, yields about 1500 to 2000 brass of murum. According to the strict interpretation of evidence it comes to this that an acre of land should give 1500 brass of murum and its price should be Rs. 750/- at 8 annas per brass. That amount, in my opinion the Municipality is clearly entitled to. The Government at the time when it valued one acre of land valued only agricultural piece of land. It died not take into consideration the additional factor that this land was murum quarrying area. As a murum quarrying area, in my opinion, the Municipality is clearly entitled to the extra amount of Rs. 750/-

As an agricultural piece of land, from the various sales of agricultural lands shown in the award, the average valuation per acre is shown to be Rs. 232/-. In my opinion the Government should concede this average valuation of Rs. 232 for this one acre of land. In the result , the Government

should

should pay Rs. 232 the value of the land, one acre in area as agricultural piece of land, which has been lost to the Municipality by compulsory acquisition, and the extra amount of Rs. 750/- which the Municipality lost by way of its value in the shape of murum yield. That makes a total of Rs. 982/- 15 percent on this amount has to be allowed under Sec. 23 of the Land Acquisition Act for compulsory acquisition and that will be Rs. 147/- - in all Rs. 1129/-.

In the result I award Rs. 1129 to the Municipality for the land acquired under this reference including 15% for compulsory acquisition under Sec. 23. In my opinion the Government should pay costs of the Municipality on the amount of Rs. 900/- . The Covernment shall also pay interest at 6% on the amount of Rs. 900/- from the date of their taking possession of this araa.

Crder accordingly.

3rd January 1945.

Sd-I.A. Shaikh.
Assistant Judge.

The Copy was applied on the 5th January 1945.

Sd.
R.K.

The Copy was ready on the 13th January 1945.

Sd.
R.K.

The copy was delivered on 16th January 1945.

Sd.
R.K.

In the Court of the Assistant Judge, Dharwar
at Dharwar.

Mis. Application No. 27 of 1941.

The Gadag Betgeri Municipal Borough, Gadag. Applicant.

V.

The Assistant Collector, III Dn. Dharwar opponent.

Bill of costs.

Applicant.	Rs.As.ps.	Opponent.	Rs.As.Ps.
1. Stamp for petition.	0-0-0	1. Stamp for power.	0-0-0
2. Do. for power. Ext.4	0-8-0	2. do. for petition	0-8-0
3. do. for applications Exs. 6,8,10,12,13,15.	3-2-0	3. do. for process.	0-0-0
4. Pleader's fees on Rs. 900.	45-0-0	4. Pleader's fees.	45-0-0
5. Process fees.	0-0-0	5. Copying charges and stamps.	0-0-0
6. Copying charges and stamps.	0-0-0		
7. Subsistance allowance.	0-0-0		
Total.	48-10-0	Total	45-8-0
		Balance.	45-8-0

Costs disallowed for applications
Ext. 6,8,10,12,13,15.

Balance.

- -

Given under my hand and the seal of the Court this 3rd day of January 1945.

Sd. I.A.Shaikh.

Assistant Judge.
5/1/45.

Land Acquisition.

Dharwar.
Appeal in the High Court, Bombay in compensation case No.27 of 1941, under the Land Acquisition Act, 1894.

GOVERNMENT OF BOMBAY.
Legal Department.
Resolution No. 3278
Bombay Castle, 26th April 1945.

Letter from the Collector of Dharwar, No.L.A.Q.S.R. 277, dated 18th March 1945, addressed to the Commissioner, Southern Division, Belgaum-forwarding a copy of a letter from the District Government Pleader, Dharwar together with its accompaniments and requesting that an appeal may be preferred to the High Court, Bombay, against the decision of the Assistant Judge, Dharwar, dated the 3rd January 1945 in the case noted in the margin.

In the Court of the Assistant Judge, Dharwar
Miscellaneous Application No.27 of 1941.
(under section 18 of the Land Acquisition Act, 1894)

The Gadag Betgeri Municipal Borough .. .. .. Petitioner

vs

The Assistant Collector, III Division, Dharwar. .. Opponent.

Endorsement by the Commissioner, Southern Division, No. L.A.Q.S.R.2753 dated the 27th March 1945 - Forwarding the the above with his cocurrence.

Letter to the Government Pleader, High Court, Bombay, No. - 2763, dated the 10th April 1945 - informing him that Government has decided to appeal.

RESOLUTION:- Sanction is accorded to the institution of an appeal in the High Court, Bombay against the decision of the Assistant Judge, Dharwar dated the 3rd January 1945, on the - grounds contained in the award of the Assistant Collector, - Dharwar dated the 14th October 1940, and those contained in the letter of the District Government Pleader, Dharwar No.37 dated the 20th January 1945, the letter of the Collector of Dharwar, No.L.A.Q.S.R. 277 dated the 18th March 1945 ~~and also in respect of the percentage of interest allowed on the excess amount~~.

By order of the Governor of Bombay,

NSH

P.N. MOOS,
for { Secretary to Government.

Issued 28/4-2614

Submitted for signature with reference to the concluding portion of para 1 at p.12 ante.
G.P. has duly filed the appeal as per letter dt 10 To 4-45 (p.7 ante).

Original

The Revenue Department.
The Finance Department.
The Accountant General, Bombay.
The Commissioner, Southern Division.
The Collector of Dharwar,
The Government Pleader, High Court, Bombay.

S.S. 24/4

A.L.R. Is it necessary to say 'and also in respect of the percentage of interest allowed on the excess amount'? Any comments?

Resubmitted. (L.D.) No. 1296 dt 25/4 NSH 25/4 16-12-1943
Please see G.R. at slip F (p.27 of file below).

A.L.R. Not necessary. NSH 25/4.

Subd. after vsàm.

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27/4

85 CHP
77/4

Hnl

F 45
7/4

Subject:Appeal against the order of the Assistant Judge under Sec.54 of the Land Acquisition Act.

No.L.A.Q.288 Letter. Dharwar, 16/7/1945

To

The Commissioner,S.D.Belgaum.

I submit a copy of the District Government Pleader, Dharwar's letter No.259 dated 14/6/1945 together with its accompaniments in connection with the order dated 14/4/1945 passed by the Assistant Judge,Dharwar on a reference made to him under Sec.18 of the Land Acquisition Act about an award dated 30/4/1943 passed under Sec.11 of the Act by the Special Land Acquisition Officer,Hubli(Mr.S.T.Raj Ayer). I am to say that land measuring 1644 Sq.yards owned by one Mr.Makandar of Hubli was acquired for slum clearance and the total amount of compensation awarded to him was Rs.3261-1-0. Being dis-satisfied with the S.L.A.O's award,Mr.Makandar sought a reference to the District Court Dharwar under Sec.18 of the L.A.Act. and consequently a reference was made in which the Assistant Judge awarded Rs.5638-1-0 as compensation.

2. A copy of the Special Land Acquisition Officer's remarks on the order of the Assistant Judge is enclosed herewith for favour of perusal. Apart from the award for this piece of land it seems that the larger question is also raised herein(as pointed out by the District Government Pleader) namely whether a site mainly used for the purpose of a passage and yielding no income to the owner can be valued otherwise than as such. Moreover the increase for sub soil possibilities allowed by the Judge seems extra-ordinary based as it evidently is, on purely speculative claims.

3. I would, therefore, suggest that Government may please be moved to sanction the institution of an appeal to the High Court under Sec.54 of the Land Acquisition Act. I am sending copies of all the relevant documents to the Government Pleader, High Court, Bombay in advance.

1917

BB.

S. S. Bam

Collector of Dharwar.

No. L.S.T.-347.
Office of the Commissioner S.D.
Belgaum, 30th July 1945.

Submitted and recommended.

6476
A 1-8-45 H.

Remembrancer of Legal Affairs.

Commissioner S.D.

6476
1-8-45

Submitted
1-8

2. These papers relate to the proposal of the Collr.of Dharwar (Sanction) to sanction the institution of an appeal under section 54 of the Land Acquisition Act, 1894 (I of 1894) in the High Court, Bombay, against the decision of the Extra Assistant Judge at Dharwar dated the 14th April 1945 (p.12 ante) in Misc. Application No.137 of 1943 under section 18 of the Land Acquisition Act, 1894, in the Court of the Extra Assistant Judge at Dharwar (p.5 ante). The Commr., S.D. recommends the said proposal (p.2 ante).

3. It appears that land measuring 1644 sq.yds. owned by one Mr.Makandar of Hubli was acquired for slum clearance and the total amount of compensation awarded by the Special Land Acquisition Officer, Hubli, was Rs.3261-1-0. Being dissatisfied with the said award Mr.Makandar made a reference to the District Court, Dharwar, under section 18 of the L.A.Act, 1894. The Extra Asstt.Judge has awarded the total compensation of Rs.5638-1-0. Thus there is an increase of Rs.2377-8-0, say Rs.2377, as pointed out in para.3 of the note of Special Land Acquisition Officer, Hubli (p.15 ante).

4. The decision of the Extra Asstt.Judge, Dharwar, has been examined in detail by the Special Land Acquisition Officer, Hubli, in his note at pp.15-17 ante. In the opinion of the D.G.P., Dharwar (p.3 ante), the question in this case is one of principle as to whether a site which is used mainly for the purposes of road for the different tenements on both sides,

would be valued otherwise than on a nominal basis. It would appear that the view of theLand Acquisition Officer that such site has only a nominal value is fully justified from the practical point of view. No doubt potential value of the property under acquisition will have to be taken into account in determining the amount of compensation but that must not be of speculative nature. The question of sub-soil and other aspects referred to by the Learned Asstt. Judge in his order does not arise in the case under reference. There are no such possibilities of the property being put to such ecomomic use and the standard adopted by the Learned Judge is far remote. On the above principles, he holds that the Learned Judge has wrongly valued the site which is undisputedly used as a road, capable of any ecomomic use. Accordingly the order directing the payment of additional compensation of Rs.2377 is not legally proper and hence an appeal should be filed against the same under section 54 of the L.A.Act,1894. Also, as the claim made is excessive, the petitioner should have been directed to pay the costs of Govt. The Collr. of Dharwar shares the view of the D.G.P. Dharwar (vide para.2 of his letter at p.1) and thinks that apart from the award of this piece of land, it seems that the larger question is also raised herein, namely whether a site mainly used for the purpose of a passage and yielding no income to the owner can be valued otherwise than as such. Moreover, the increase for sub-soil possibilities allowed by the Judge seems extraordinary, based as it evidently is on purely speculative claims. The above view is also supported by the notes of valuation of Roads and Ways on p.155 of L.A. Act by S. Venket Raman B.A.M.L.

5. Accordingly, as desired by the Collr; of Dharwar and recommended by the Commr. S.D. sanction may be accorded to the institution of an appeal in the High Court, Bombay, against the decision of the Extra Asstt. Judge, Dharwar, dated the 14th April 1945, on the grounds contained in the award of the Special Land Acquisition Officer, Hubli, and those contained in the letter of the District Govt. Pleader, Dharwar,

No.159 dated 14-6-1945.

6. It appears that in this case, the judgment was delivered on 14.4.1945 and the bill of costs was signed on 19-4-45. As shown in the margin, the last date of filing the appeal in the High Court, is August 4. 1945. As the appeal may not be time-barred, the accompanying letter to the G.P., High Court, Bombay is put up for approval and signature. These papers should be returned without fail from Poona to.morrow, so that the letter to the G.P. High Court, Bombay, may issue in Bombay on the 3rd inst. It has been ascertained from the G.P. High Court's office that certified copies of the Judgment and decree in this case, have been duly received in that office.

Id/- BDP
1/8/45.

1- 5--1945
17- 5-1945
17 days copy in
days.
19- 4- 1945

April	11)	90
May	31)	17
June	30)	107
July	31)	
	103	

August 4,1945 is
therefore the last day of
filing the appeal.

AA.LR
RTR
2/8.

RLA
2d/- P.NM
2/8.

Sny RD
2d/- KKY.

In the Court of the Extra Assistant Judge, at Dharwar.

Miscellaneous application No.137 of 1943 under p.18 of Act I of 1894

Modinsha Guru Amannuallasha Application
Makandar of Hubli.

against.

The Special Land Acquisition Officer, Hubli... Opp.

Opponent.

Land Acquisition.
Dharwar.
Appeal in the High Court, Bombay, in Compensation Case No.137 of 1943 under the Land Acquisition Act,1894.

GOVERNMENT OF BOMBAY.
Legal Department.
Resolution No.5940

Bombay Castle, 10th August 1945.

xp. 3 are

Letter from the Collector of Dharwar, No.L.A.Q.288 dated the 16th July 1945 addressed to the Commissioner, Southern Division,- Forwarding a copy of a letter from the District Government Pleader, Dharwar, together with its accompaniments and requesting that an appeal may be preferred to the High Court,Bombay, against the decision of the Extra Assistant Judge, Dharwar, dated the 14th April 1945, in the case noted in the margin.

In the Court of the Extra Assistant Judge, Dharwar.
Miscellaneous Application No.137 of 1943 under section 18 of Act I of 1894.

Moidinsha Guru Amanullasha Makandar of Hubli.....Petitioner

versus

The Special Land Acquisition Officer, Hubli.....Opponent.

Endorsement by the Commissioner, Southern Division, No.L.S.T.-347 dated the 30th July 1945 - Forwarding the above with his recommendation.

Letter to the Government Pleader, High Court, Bombay, No.5751, dated the 3rd August 1945 - Forwarding papers and informing him that Government has decided to appeal.

RESOLUTION.- Sanction is accorded to the institution of an appeal in the High Court, Bombay, against the decision of the Extra Assistant Judge, Dharwar, dated the 14th April 1945, on the grounds contained in the award of the Special Land Acquisition Officer, Hubli and the letter of the District Government Pleader Dharwar, No.159 dated the 14th June 1945.

Submitted for signature
(Orders at ¶ 6 ante)

By order of the Governor of Bombay,

Original R Kantawala

For{ P. N. MOOS,
(Secretary to Government.

7/8
S.S. 7/8

A.A.L.K

Issued 10/8

To
The Revenue Department,
The Finance Department,
The Accountant General,Bombay,
The Commissioner,Southern Division,
The Collector of Dharwar,
The Government Pleader,High Court, Bombay.

Submitted after issue
file in Legislation/45.

SAP.
4/8 S.S. 4 N
13/8

In His Majesty's High Court of Judicature at Bombay.

First Appeal No. 350/45.

Special Land Acquisition Officer, Hubli,
Dist:Dharwar. Appellant.

Vs.

Moidinshah Guru Ahanullasha of Hubli Dist; Dharwar. Respondent.

Claim Rs.

Whereas the appellant abovenamed has preferred the above appeal against the Decree of the Civil Judge Senior Division, Hubli, and whereas Notice of Appeal was served on the Respondent abovenamed begs to file cross-objections to the decree appealed from and sets forth the following grounds:-

1. That the lower Court ought to have awarded compensation at the rate of Rs.5/- per Square yard on 366 Square Yards. In failing to consider the potentiality of the land the lower Court committed an error of principle.

2. For the remaining 922 Sq.Yards the compensation should have been awarded at the rate of Rs.2-8-0 per Sq.Yards

3. The lower Court was bound to assess the market value of the land to be acquired and then to apportion the value between persons entitled to the land as well as the encumbrances thereon.

4. In assuming that only sub-soil right was to be valued the lower Court has committed a grave error of law.

5. The Respondent should have been awarded his costs.

Bombay. Sd. N.C.Shah,

17th November 1945. Advocate for the Respondent.

N.B. Claim valued at Rs.2377/-
Yds.366 x (5-2½) 915-0-0
Yds.922 x(2½-1½) 1152-8-0
2067-8-0 with additional 15% 2377.

p. 1 ante

11063 dated 15.12.1945.

Submitted with reference to the endorsement of the G.P. High Court, Bombay, No. 4417, dated 14.12.1945 at p. 1 ante.

2. Sanction for the institution of an appeal by Govt, in the High Court, Bombay, under section 54 of the L.A. Act, 1894, against the decision of the Extra Asstt. Judge, Dharwar, dated the 14th April 1945 in Miscellneous Application No. 137 of 1943 under section 18 of the L.A. Act, 1894 (I of 1894), was accorded by G.R. L.D. No.5940, dated the 10th August 1945 at p. 29 of L.A.Q.Dwr./45, on the grounds contained in the award of the Special L.A. Officer, Hubli and the letter of the D.G.P. Dharwar No. 159, dated 14.6.1945. Please see letter from the Collr. of Dharwar No. L.A.Q. 288, dated 16.7.1945 and office note dated 1.8.1945 underlying the said L.D. G.R. at pages 23-26 of L.D. file L.A.Q.Dwr./45.

3. Now, the G.P. High Court, Bombay, sends a copy of cross-objections filed on behalf of the Respondent in the said First Appeal No. 350 of 1945 and requests instructions, if any, for opposing the same. In the absence of the copy of the judgment of the Extra Assistant Judge, Dharwar, and a copy of the Memo.of Appeal filed in the High Court, it is not possible to issue any helnful instructions to G.P. High Court, Bombay, for opposing the cross-objections. Under the circumstances, the G.P. High Court may be instructed to oppose the cross-objections on such grounds, if any, as may be communicated to him by the Collector of Dharwar.

20/12/45.

A.Z.R 20/12

R.L.A 21/12/45

Rs.as.ps.

Reed on 7-6-49. K. 154 Sectioner Mr. D. R. Gokarn 1-12-0 Fols. 14
Typed on 14-6-49 Examiner Mr. W. A. Desai } 0-7-0
Reader Mr. G. R. Desai }
Paper charges. 0-0-9

Total Rs..... 2-3-9

Copy applied for on 3-3-49. Rupees Two, annas three and pies nine only.
Copy ready on 22-6-49.
Copy delivered on 18-7-49
sent by V. P. Regd. Post

P Paranjpe.
Supdt Decree Deptt.
22-6-49.

Assistant Superintendent

Appeal No. 350 of 1945 From Original Decree.

(Under-Act I of 1894)

The Special Land Acquisition Officer, Hubli

(Original Opponent).....Appellant.

Versus.

Moidinsha Guru Amanullasha Makandar.

(Original Petitioner).....Respondent.

Appeal against the Order dated 14th April 1945 passed by N. C. Vakil, Esquire, Extra Assistant Judge at Dharwar in Miscellaneous Application No. 137 of 1943.

Mr. K. G. Datar, on behalf of Government for the Government Pleader, for the Appellant.

Counsel Mr. J. C. Shah with Mr. N. C. Shah Advocate for the Respondent.

Coram:- Chagla, C.J. and Gajendragadkar, J.

16th February 1949.

Oral Judgment (Per Chagla, C.J):- This is an appeal from an order made by the Extra Assistant Judge, Dharwar on a reference which came before him under S.18 of the Land Acquisition Act. The property under acquisition consisted of 1098 sq. yds,

HIGH COURT APPELLATE SIDE CERTIFIED COPY BOMBAY

Therefore we are not dealing in this case with the sub soil of a land which has been used as a public road. This case was considered in a subsequent Calcutta case, Chairman of the Howrah Municipality v. Khetra Krishna Mitter, I.L.R. 33 Cal. 1290 and there the Divisional Bench consisting of Mr. Justice Rampini and Mr. Justice Mookerjee, in our opinion, laid down, with respect, the correct test to be applied to these cases. Mr. Justice Mookerjee points out that you may have a class of cases where it may be held that sterlization is so permanently attached to ownership as to deprive the owner of all claim to compensation, and you may have a class of cases where the land, although subject to restrictions as to use, has still some value, and what we have to consider is in which of these two classes the land in this reference falls. If the passage was used as a public road then undoubtedly there would be a permanent sterilization of its value, but if it has not been used as a public road, it is only subject to restriction as to its use and we must hold that it has still some value which requires to be assessed; and therefore the real question - really is in this reference as to what is the proper value we should attach to the what is the proper value which we should attach to the rights which still vested in the respondent in this land at the date of the assessment.

HIGH COURT APPELLATE SIDE CERTIFIED COPY BOMBAY

The question as to what value should be given was considered in a subsequent Calcutta case, Secretary of State v. Dulali Bala Debi A.I.R. 1938 Cal.75. This was a stronger case than we have before us. There certain properties were acquired by the Calcutta Improvement Trust and as those - properties abutted on passages a higher value was paid for those properties. But while the properties were acquired the passages were not acquired at the same time. They were subsequently acquired and then it was contended on behalf of the acquiring authority that these passages had no value and no award should be made in respect of them. The Calcutta High Court rejected that contention and upheld the award of the

Land Acquisition Officer who had assessed these passages at one-fourth the rate of the surrounding land. The learned Judge below has accepted the same principle and we see no reason why we should differ from the view he has taken. He has taken the value of the surrounding land at Rs.5 and he was awarded Rs.1-4-0 per square yard in respect of the land which according to him could only be used as a passage.

Now, with regard to the land in respect of which the learned Judge has awarded Rs.2-8-0 per square yard Mr. Shah who has filed cross-objections contends that the learned Judge should at least have awarded Rs.5 which was the value of the surrounding land and the learned Judge also held that Rs.5 was the minimum price could be fetched of surrounding land. There were lands which could fetch higher price. But the position with regard to this land is that it is not land which could be sold in open market. All that the learned Judge holds is that all the land in question was not needed for a passage as it was only a foot passage and not a cart passage, and therefore he excludes certain part of the land as not - necessary for the passage and comes to the conclusion that that portion could be used for storing things or for extending the buildings and the tenements. But you cannot judge this land on the same footing as the surrounding land which could be sold in the open market and which would not be affected by the presence of buildings or the presence of the common passage. In our opinion the learned Judge was also right in not awarding with regard to this land a price similar to the price of the surrounding land.

It was then been urged by Mr. Datar that the learned Judge was wrong in the order as to costs which he made. Now, before the Land Acquisition Officer the respondent went with a claim of Rs.44000, undoutedly a highly inflated claim. Before the Court he did not expressly mention what amount he claimed. His application was rather vague, but as he was pressing the same point of view that he had pressed before the Land Acquisition Office it was -

understood by the Government that he was still claiming Rs.44000 and the Government have paid their lawyers on that basis. The order for costs that the learned Judge made was that he asked each party to bear his own costs. Now, Mr. Datar says that in view of the provisions of s.27(2) of the Land Acquisition Act the learned Judge should have deprived the respondent of some part of his costs because of the inflated claim that he made. Now, normally this Court does not interfere with the discretion exercised by the lower Court in the matter of costs unless this Court feels that the Court below has gone wrong on a question of principle. We have here this position, on the one hand the respondent claimed Rs.44000. On the other the Government insisted that the land had no value whatsoever and that the only award should be made of Re.1. Both sides had pitched their cases too high, perhaps the respondent had pitched it higher than the Government. But one cannot say that the learned Judge is wrong in principle with regard to the order of costs that he made. We will not therefore interfere with that order.

The result is therefore that both the appeal and cross-objections fail and both are dismissed with costs.

By order of the Court,
Sd/- S. H. Belavadi.
Deputy Registrar.

True Copy.
For Deputy Registrar.
The 22nd day of June 1949.

Rs.as.ps. 27/64

Read on. 7-6-49
Typed on 16-6-49. K.154

Scotioner Mr.D.R.Gokarn	0-14-0	Folo. 7
Examiner Mr.T.A.Desai)	0-3-0	
Reader Mr.G.R.Desai)		
Paper charges.	0-0-6	
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY.

Wednesday the 16th day of February 1949.

Appeal No. 350 of 1948 From Original Decree.

(Under Act I of 1894)

The Special Land Acquisition Officer, Hubli

(Original Opponent).....Appellant.

Versus.

Moidinsha Guru Amanullasha Mokandar

(Original Petitioner).....Respondent.

Claim Rs.2,833-10-0 for all purposes.

This is a reference under Section 18 of the Land Acquisi-tion Act I of 1894, by the Special Land Acquisition Officer, Hubli.

The Miscellaneous Application No. 137 of 1943 under Section 18 of Act I of 1894 was decided by the Extra Assistant Judge of Dharwar who awarded Rs.5,638-1-0 making no order as to costs.

An appeal has been admitted in the High Court from the decision of the lower Court. Notice was ordered to issue by the Honourable Mr. Justice Rajadhyaksha on the 28th day of September 1948.

The grounds of objection to the decision appealed against are:-

1. That the learned Judge should have held that the land in question was a street available for public use and that it had no more than a nominal value.

2. That the learned Judge should have held that the land in question had no potential economic value, being a public street.

3. That the cases referred to have been misapplied.

4. That the learned Judge erred in holding that the passage in question was a mere foot passage.

5. That the learned Judge should have held that under the circumstances, the owner could not have any sub-soil rights.

6. That the learned Judge should have ~~hxkdxthat~~ ~~xxxxx~~ have made the applicant pay the costs of the Opponent in any event.

7. That the order enhancing the compensation is wrong in law and on facts.

8. That the learned Judge has not drawn proper inferences from the circumstances of the situation.

Note.- The claim is valued at Rs.2,377 plus Rs.456-10-0 the taxed costs of ~~the circumstances of the situation.~~ the opponent is equal to Rs. 2833-10-0 for all purposes

Cross-objections in First Appeal No.350 of 1945.

Whereas the Appellant abovenamed has preferred the above appeal against the decree of the Civil Judge, Senior Division, Hubli, and whereas Notice of Appeal was served on the Respondent, the Respondent abovenamed begs to file cross-objections to the decree appealed from and sets forth the following grounds :-

1. The lower Court ought to have awarded compensation at the rate of Rs.5 per square yard on 366 square yards. In failing to consider the potentiality of the land the lower Court has committed an error of principle.

2. For the remaining 922 square yards the compensation should have been awarded at the rate of Rs.2-8-0 per square yard.

3. The lower Court was bound to assess the market value of land to be acquired and then to apportion the value between persons entitled to the land as well as the encumbrances thereon.

4. In assuming that only sub-soil right was to be valued the lower

Court has committed a grave error of law.

6. The Respondent should have been awarded his costs.

N.B.- Claim valued at Rs.2,377-

Yds. 366 x (6-2½) ...	...	915-0-0
Yds. 922 x (2½-1¼) ...	...	1,152-8-0
		2,067-8-0 with additional 15 per cent = 2,377.

Coram:- Chagla,C.J. and Gajendragadkar,J.

For the reasons stated in the accompanying Judgment, the Court confirms the order of the lower Court and dismisses the appeal and the Cross-objections, with Costs.

16th day of February 1949. Sd/- S.H.Belavadi.
Deputy Registrar.

Bill of costs in the High Court:

By the Appellant:	Rs.as.ps.
Stamps for Memorandum of Appeal.	212-8-0
Stamps for copies of decree and judgment.	1-14-0
Stamps for Vakalatnama. G.P.appears.	0-0-0
Bhatta for Proceds.	3-0-0
Sectioner's Fee.	6-13-0
Advocate's Fee.	125-0-1
Printing charges.	11-0-0
Copying charges for preparing paper-books.	4-12-0
Advocate's Fee in the matter of Cross-objections.	111-4-11
Copying Fee under Rule 111 of the High Court, A.C. Rules, 1938.	4-6-0
Total Rs....	480-9-0

By the Respondent:

Stamps for Vakalatnama.	2-8-0
Advocate's Fee.	125-0-1
Printing charges.	6-0-0
Stamps for Memorandum of Cross-objections.	181-4-0
Advocate's Fee in the matter of Cross-objections.	111-4-11
Total Rs...	425-1-0

Sd/- S.H.Belavadi.
Deputy Registrar.

The 16th day of February 1949.

True Copy.

For Deputy Registrar.

The 2nd day of June 1949.

HIGH COURT APPELLATE SIDE CERTIFIED COPY BOMBAY